

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

RONALD L. AND KATHLEEN GESSAMAN,)	
)	DOCKET NO.: PT-1997-17
Appellants,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on April 20, 1999, in the City of Great Falls, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

The taxpayers, Ronald and Kathleen Gessaman, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Joan Vining, residential appraiser, presented testimony in opposition to the appeal. Testimony was presented and exhibits were received. The Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this

matter, the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The property subject of this appeal is described as follows:

Lot 4, Block 1, 1st Supplemental Church Addition to the City of Great Falls, County of Cascade, State of Montana, and improvements located thereon. (Assessor Code 585300).

3. For the 1997 tax year, the DOR originally appraised the subject property at a value of \$14,381 for the land and \$149,860 for the improvements. The value of the structure was later reduced to \$142,350.

4. The taxpayers appealed to the Cascade County Tax Appeal Board on September 25, 1997 requesting values of \$14,316 for the land and \$105,000 for the improvements, stating:

The 1997 reappraisal increased the appraised value of our residential property at the above referenced address by 61.78% from the 1996 value of \$101,523 to \$164,241. The 1996 value was set thru a 3/12/97 State Tax Appeal Board (STAB) decision that the DOR finally implemented in September 1997. There has been no change in the property since 1996 except increasing age. The 1997 appraisal increase appears to be based on erroneous/arbitrary changes in property classification factors.

5. In its October 22, 1997 decision, the county board adjusted the value of the improvements and denied the appeal on the land, stating:

After hearing testimony and reviewing exhibits, the Board feels the effective age on the house should be lowered to "1986", resulting in a 5% decrease in value. The value on the improvements is lowered to \$134,227.00. The value of the land remains at \$14,381.00.

6. The taxpayers then appealed that decision to this Board on November 20, 1997, stating:

The 1997 reappraisal increased the appraised value of our residential property at the above referenced address by 61.78% from the 1996 value of \$101,523 to \$164,241. The 1996 value was set thru (sic) a 3/12/97 State Tax Appeal Board (STAB) decision that the DOR finally implemented in September 1997. There has been no change in the property since 1996 except increasing age. The 1997 appraisal increase appears to be based on erroneous/arbitrary changes in property classification factors.

The county tax appeal board failed to:

- 1. Order entry of taxpayer-demonstrated correct physical data for this property on the appropriate DOR "Property Record Card" (PRC-452);*
- 2. Adequately address the application of an ECF to a specific category of real property when real property with that categories' distinctive characteristic were not included in the calculation of that ECF; and*
- 3. Ensure that DOR-utilized cost numbers were consistent with the actual cost of specific property improvements.*

7. The values before this Board are the values determined by the Cascade County Tax Appeal Board.

TAXPAYERS' CONTENTIONS

Mr. Gessaman indicated this appeal arises from three

specific areas of assessment:

1. Insuring the correctness of physical data.
2. The removal of the ECF.
3. The adjustment of the cost numbers by the DOR as applied to the subject basement.

Taxpayers' exhibits 1 through 12 are presented to address the area of the taxpayers' first concern, the accuracy of the physical characteristics of the property.

The following is a brief description of exhibits 1 through 12:

Exhibit #	Exhibit	Date	1996 Value		1997 Value	
			Land	Imp	Land	Imp
#1	1997 Appeal to STAB	11/20/97				
#2	1997 assessment notice	9/ 9/97	\$12,096	\$107,680	\$14,381	\$149,860
#3	1997 assessment notice	9/18/97	\$12,096	\$ 89,427	\$14,381	\$149,860
#4	1998 assessment notice	6/ 5/98	\$12,096	\$ 89,427	\$14,381	\$141,810
#5	AB-26 Adjustment Form	7/ 1/98				
#6	DOR response to AB-26	7/ 8/98				
#7	AB-26 Adjustment Form	7/ 8/98				
#8	Five photographs					
#9	Property Record Card	5/17/97			\$14,381	\$149,860
#10	Property Record Card	6/ 4/96	\$12,096	\$107,680		
#11	Property Record Card	5/17/97			\$14,381	\$142,350
#12	Deck Area	10/20/97				

The taxpayers are unsure if the DOR 1997 appraisal takes into account that the total deck area only consists of 103 SF and that the house has no dishwasher.

Taxpayers' exhibit #9 is a copy of the property record card dated 5/17/97. The areas of concern are the dishwasher, quality of basement finish, effective age, decks, value assigned to the basement and the economic condition factor (ECF).

Taxpayers' exhibit #11 is a copy of the property record card dated 5/17/97 that was presented by the DOR at the CTAB

hearing. This exhibit shows a built-in dishwasher valued at \$500.

The second area of assessment that concerns the taxpayers is the application of the ECF. The residence is not 100% complete and exhibit #13 list the items still in need of completion. The DOR has established the residence to be 95% complete and the taxpayers did not dispute this completion percentage. Taxpayers' exhibit #14 is a copy of STAB's 1996 decision, *Gessaman v. DOR*, PT-1996-13, in which the Board removed the application of the ECF of 108%. The taxpayers' emphasis to the decision is, *"...There was, however, no evidence or testimony provided by the DOR to indicate that the ECF applied was applicable to a property that was not considered 100% complete. In other words, no similar properties still under construction, were utilized to calculate the ECF..."*. *"...1996 tax year of the subject property shall be modified by returning the effective year to 1986 and by the removal of the Economic Condition factor of 108%..."*.

The third area of concern is the cost numbers used by the DOR to value the basement area.

The taxpayers have partially finished the basement, but it is not complete. Mr. Gessaman referred to the basement finish as "winterized". The basement is framed, insulated, dry-walled, taped and painted. It is the taxpayers' opinion that this finish should only amount to \$2,500 to \$3,000. The following table

illustrates the various costs/estimates the taxpayers presented to show that the DOR has overstated the value of the basement finish:

Exhibit #	Exhibit	Area (sf)	\$/sf	Total Cost
15	Basement Finishing Correction	1,344	\$2.40	\$3,226
15.1	Estimated Cost of Finishing			
	All Steel Construction (10/20/97)	1,350	\$2.40	\$3,240
	All Steel Construction (4/14/99)	1,350	\$3.25	\$4,388
	All Steel Construction (10/20/97)	1,350	\$2.40	\$3,240
	Rocky Mtn. Remodeling (4/12/99)		\$2.50-\$3.00	\$3,000
	Rick Bell Contractor (4/12/99)			\$3,000
15.2	Means Cost Method (4/16/99)			\$3,282-\$3,347
15.3	Various Contractors (4/14/99)	1,350		\$2,742-\$2,876
15.4	Materials Cost of Finishing			
	Our Costs			\$ 685.52
	Poulsen's Inc. (4/16/99)			\$1,214.27
	Johnson Madison Lumber (4/16/99)			\$1,216.98
15.5	All Steel Building Co. (4/15/99)		\$3.25	

Taxpayers' exhibit 16, titled "Building Value Calculation" establishes a value for the structure at \$108,979. The exhibit further states, *"The Value shown on the declaration page of our homeowner insurance policy is \$100,000 - this is very close to the above calculated value. We took the average of the two values and rounded up to closest 1000 to arrive at the \$105,00 (sic) shown on our Property Tax Appeal Form."*

DOR'S CONTENTIONS

DOR's Exhibit A is the property record card for the subject. Summarized, this exhibit illustrates the following:

Land Data

Width - 72'; Depth - 150'; Depth Factor - 112
Unit Price - 178.34; Land Value - \$14,381

Improvement Data

Floor area	1,382 square feet
Bedrooms	3
Bathrooms	2
Year Built	1986
Effective Age	1990
Physical Condition	5 - Good

Grade 5 plus - Above Average
Condition/Desirability/Utility (CDU) - Good

Dwelling Computations

Replacement Cost New (RCN)		\$141,150
Percent Good	X	96%
Percent Complete	X	95%
Economic Condition Factor	X	110%
Replacement Cost New Less Deprec.		\$141,600
Other Improvements	+	\$ 750
Land Value	+	\$ 14,381
Total Market Value		\$156,731

Ms. Vining testified that the value the DOR currently has on the property reflects that the built-in dishwasher has been removed and the deck area has been corrected to reflect 100 square feet.

Ms. Vining testified that the basement area is finished with minimal quality.

The market value was established from the cost approach to value. An economic condition factor (ECF) of 110% was applied to this property. Ms. Vining testified that all properties within the neighborhood received an ECF of 110%, regardless if they were 100% complete or something less.

The land value was calculated as follows:

Base Lot Width - 70 front feet
Base Lot Depth - 120 feet
Base Rate - \$180 per front foot
Adjusted Rate - \$120 per additional front foot

Depth Factor = $\sqrt{\text{actual depth/standard depth}}$

Subject:	72' X 150'
Depth Factor	$\sqrt{150/120} = 1.12$
	70' X \$180 = \$12,600
	2' X \$120 = \$ 240
Total	\$12,840

1 $\sqrt{}$ = square root

Depth Factor	X 1.12
Total value	\$14,381

BOARD'S DISCUSSION

The taxpayers did not present sufficient evidence to suggest a land value less than the DOR's determination of \$14,381.

The taxpayer and the DOR both agreed that a built-in dishwasher is not present in the home, therefore it should not be listed on the property record card.

The taxpayer and the DOR both agree that the area of deck is not 1,000 square feet. The taxpayer referenced 103 square feet of deck area and the DOR adjusted this to 100 square feet, therefore, DOR's figure should be used in determining value.

In a previous decision, PT-1997-13, this Board established the effective age of the structure at 1986. The CTAB modified the effective age of the property from 1990 to 1986 in its September 25, 1997 decision, which stated, "*...the effective age on the house should be lowered to "1986", resulting in a 5% decrease in value...*". Page 47.6 of the Montana Appraisal Manual is the depreciation table for residential dwellings. The depreciation percentages for a property with the effective ages of 1990 and 1986 are as follows:

Observed Age	Good (CDU)	
5-6	.96	(1990 effective age)
9-10	.91	(1986 effective age)

The CTAB's decision to increase the depreciation 5% is consistent with the depreciation table.

This Board removed the ECF from this property in a prior appraisal cycle decision, PT-1996-13. Nothing was presented to indicate that the ECF should applied to this property for the current appraisal cycle.

It is the Board's opinion that the basement finish is superior to taxpayers' determination. Therefore, no adjustment to this area of the structure is warranted.

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CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **§15-2-301 MCA.**

2. **§15-8-111, MCA. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

3. **15-2-301, MCA, Appeal of county tax appeal board decisions.** (4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.

It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Cascade County by the Assessor of that county at the 1997 tax year values of \$14,381 for the land and the value of the improvements as determined by the DOR after the following changes:

1. Remove built-in dishwasher.
2. Deck area consists of 100 square feet.
3. The effective age is 1986.
4. Remove the ECF of 110%.

The appeal of the taxpayer is therefore granted in part and denied in part and the decision of the Cascade County Tax Appeal Board is modified.

Dated this 28th of May, 1999.

BY ORDER OF THE
STATE TAX APPEAL BOARD

GREGORY A. THORNQUIST, Chairman

(S E A L)

JAN BROWN, Member

JEREANN NELSON, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 28th day of May, 1999, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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